Goh Koon Suan v Heng Gek Kiau

HIGH COURT (JOHORE BAHRU) — CIVIL SUIT NO 22–286 OF 1990
JAMES FOONG JC
31 OCTOBER 1991

Family Law *— Maintenance — Application for maintenance of child made under s 3(2) of Married Women and Children (Maintenance) Act 1950 — Application filed in High Court — Whether High Court has jurisdiction to hear application as a court of first instance — Married Women and Children (Maintenance) Act 1950 s 3(2) — Guardianship of Infants Act 1961 — Rules of the High Court 1980 O 84 r 3*

Civil Procedure *— High Court — Jurisdiction — Application for maintenance of child under s 3(2) of Married Women and Children (Maintenance) Act 1950 — Whether High Court has jurisdiction to hear application as a court of first instance — Married Women and Children (Maintenance) Act 1950 s 3(2) — Rules of the High Court 1980 O 84 r 3*

This is an application by the defendant under s 3(2) of the Married Women and Children (Maintenance) Act 1950 (Rev 1981) for the maintenance of a child born as a result of cohabitation between the plaintiff and the defendant. At the hearing of this application, the plaintiff's solicitors took a preliminary objection that the High Court as a court of first instance, has no jurisdiction to hear the application. The defendant argued that the High Court has jurisdiction and cited s 9 of the Married Women and Children (Maintenance) Act 1950 (Rev 1981) and O 84 r 3 of the Rules of the High Court 1980.

Held, dismissing the defendant's application:

(1) The 'court' granting relief under s 3(2) of the Married Women and Children (Maintenance) Act 1950 has been defined under s 3 as the subordinate courts. Such relief as claimed by the defendant should in the first instance be brought in the subordinate court. Only when, as provided for under s 8 of the said Act, such matters in the opinion of the subordinate court be more conveniently dealt with by the High Court, can the matter be referred to the High Court.

(2) Section 9 of the Married Women and Children (Maintenance) Act 1950 does provide the High Court with powers to determine matters arising from the said Act but its powers only relate to matters referred to it by the subordinate courts under s 8. Section 9 must be read in connection with and, in consequence to, s 8 of the Act.

(3) Order 84 r 3 of the Rules of the High Court 1980 refer to applications made under the Guardianship of Infants Act 1961. Order 84 r 1 clearly defines the ambit of these proceedings in relation to applications made under the Guardianship of Infants Act 1961.

[Bahasa Malaysia summary

Ini adalah satu permohonan oleh defendan di bawah s 3(2) Akta Perempuan Bersuami dan Anak-Anak (Nafkah) 1950 (Semakan 1981)

untuk nafkah bagi seorang anak yang telah dilahirkan berikutan daripada hubungan di antara plaintif dan defendan. Di pembicaraan permohonan itu, peguamcara plaintif telah membuat bantahan permulaan bahawa Mahkamah Tinggi sebagai mahkamah tahap pertama (first instance), tidak mempunyai bidang kuasa mendengar permohonan itu. Defendan berhujah bahawa Mahkamah Tinggi mempunyai bidang kuasa dan mengemukakan s 9 Akta Perempuan Bersuami dan Anak-Anak (Nafkah) 1950 (Semakan 1981) dan A 84 k 3 Kaedah-Kaedah Mahkamah Tinggi 1980.

Diputuskan, menolak permohonan defendan itu:

(1) 'Mahkamah' yang memberikan relif di bawah s 3(2) Akta Perempuan Bersuami dan Anak-Anak (Nafkah) 1950 telah ditakrifkan di bawah s 3 sebagai mahkamah rendah. Relif seperti yang dituntut oleh defendan seharusnya pada tahap pertama dituntut di mahkamah rendah. Cuma apabila, seperti yang diperuntukkan di bawah s 8 Akta itu, perkara sedemikian dalam pendapat mahkamah rendah lebih sesuai diselesaikan oleh Mahkamah Tinggi, perkara itu boleh dirujuk kepada Mahkamah Tinggi.

(2) Seksyen 9 Akta Perempuan Bersuami dan Anak-Anak (Nafkah) 1950 memberikan kuasa kepada Mahkamah Tinggi untuk menyelesaikan perkara yang berbangkit daripada Akta itu, tetapi kuasa itu cuma bersangkutan dengan perkara yang dirujuk kepadanya oleh mahkamah rendah di bawah s 8. Seksyen 9 mesti dibaca bersangkutan dengan dan, sebagai kesan kepada, s 8 Akta itu.

(3) Aturan 84 k 3 Kaedah-Kaedah Mahkamah Tinggi 1980 merujuk kepada permohonan yang dibuat di bawah Akta Penjagaan Budak-Budak 1961. Aturan 84 k 1 mentakrifkan dengan jelas lingkungan prosiding bersangkutan dengan permohonan yang dibuat di bawah Akta Penjagaan Budak-Budak 1961.]

Legislation referred to

Married Women and Children (Maintenance) Act 1950 s 3
Rules of the High Court 1980 O 84 rr 1, 3

Ng Chew Hor (Leng & Co) for the plaintiff.
Ho Thian Cheh (Ho Thian Cheh & Co) for the defendant.

Cur Adv Vult

James Foong JC: This is an application by way of summons-in-chambers (encl 14) for the maintenance of a child born as the result of a cohabitation between the plaintiff and the defendant.

This application arose from a counterclaim by the defendant, for maintenance of the said child in an action under a writ of summons, by the plaintiff against the defendant, for a certain property which the plaintiff alleged, to have been purchased in the name of the defendant when both of them were cohabiting together.

At the hearing of this application, the plaintiff's solicitors took a preliminary objection that this claim should not be heard by the High Court as a

court of first instance. Learned counsel cited the Married Women and Children (Maintenance) Act 1950 (Rev 1981) (hereinafter shall be referred to as 'the said Act') which provides that, maintenance of such nature should be within the confines of the subordinate courts.

Learned counsel for the defendant disagreed and contended that the High Court has jurisdiction to entertain such an application. He supported his case by citing s 9 of the said Act and O 84 r 3 of the Rules of the High Court 1980.

After considering the submissions of both parties, this court finds that the defendant's application should not have been filed in the High Court.

The defendant's claim is obviously made under s 3(2) of the said Act. This is clearly evidenced by the affidavit of the defendant (encl 16) filed in support of this application. The heading of her affidavit specifically states, 'Under s 3(2) of the Married Women and Children (Maintenance) Act, 1950'.

The 'Court' granting such relief under the said Act has been defined under s 3 of the said Act, as the subordinate courts. Therefore, such relief as claimed by the defendant, should in the first instance, be brought in the subordinate court. Only when, as provided for under s 8 of the said Act, such matters in the opinion of the subordinate court be more conveniently dealt with by the High Court, can the matter be referred to the High Court.

Learned defence counsel's reliance on s 9 of the said Act, to provide the High Court with jurisdiction to hear this application, as a court of first instance, is a misinterpretation of this particular section of the Act.

Though s 9 does provide the High Court with powers to determine matters arising from the said Act, its powers only relate to matters referred to it by the subordinate courts under s 8. Section 9 must be read in connection with and, in consequence to s 8 of the Act and not, on its own to imply that, the High Court can hear such matters in the first instance. Therefore, the court of first instance for relief sought under the Act must be the subordinate court.

Now this court shall deal with O 84 r 3 of the Rules of the High Court 1980, which defence counsel also relied upon in support of his contention that, the High Court can entertain the defendant's application as a court of first instance. Rule 3, though, provides for applications as to guardianship, maintenance or advancement of infants, which may be disposed of in the chambers of the High Court; such applications are in reference to applications made under the Guardianship of Infants Act 1961. This is so for reason that O 84 r 1 clearly defines the ambit of these proceedings in relation to the Guardianship of Infants Act 1961. Therefore the 'applications' provided for under r 3 must be confined to applications made under the Guardianship of Infants Act 1961 and not otherwise. Certainly it has no application to proceedings commenced under the Married Women and Children (Maintenance) Act 1950.

For reasons aforesaid, this court dismissed the defendant's application with costs.

Application dismissed.

Reported by Zarinah Marican